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AUDIO SERVICES  
DIVISION

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.

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OCT 1 1992

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the matter of )  
 )  
Amendment of Section 73.202(b) )  
Table of FM Allotments )  
Alturas, California )

PETITION FOR RULEMAKING

Comes now, KCNO, Inc. licensee of KYAX-FM Alturas, California respectfully requests that the Commission institute rulemaking proceedings for the amendment of Section 73.202(b) of the Commissions rules to amend the FM Table of allotments as follows:

<u>CITY</u>	<u>EXISTING</u>	<u>PROPOSED</u>
Alturas, California	233 C-1	267 C

In Support whereof the following is shown:

1. KCNO, Inc., Licensee of radio station KYAX (FM), seeks to upgrade KYAX (FM) class of operation to class C standing from a new transmitter site on Manzanita Mountain (41:16:53.5 N 120:48:02.1 W) to provide Alturas and the surrounding areas of Modoc County in California with a improved level of service to the public. The petitioner pleads the Commission issue KYAX a new class C allocation on channel 267 and modify KYAX station license consistent with the petitioners request.

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2. The attached engineering report and spacing study shows that the upgrade as proposed using the proposed transmitter site (41:16:53.5 N, 120:16:53.5 W) will conform with current FCC spacing requirements (73.207) and that there are no other petitions or application that conflict with this rulemaking request (see exhibit E-1 attached).

3. The petitioner believes that there would be great public benefit if the commission should grant this upgrade request. KYAX Serves a sparsely populated area and provides the only local FM broadcast service license to Alturas and to all of Modoc County. If granted, KYAX will provide a improved level of service to the Modoc County towns of Adin, Likely and to Canby all have no other local FM service. KYAX is the only local FM broadcast service in Modoc County in place to provide emergency communication to Modoc county as the CPCS-1 station. KYAX is working closely with local officials to provide emergency communications to the area in the event of an emergency.

4. The petitioner will apply for and construct transmission facilities consistent with this rulemaking request if granted.

5. To comply with 1.420 of the rules the petitioner believes competing proposals for the city of Alturas (41:28:49.4 N 120:32:11.8 W) can be accommodated on channel 293 or 232, as such the petitioners request is fully consistant with commission's rules and policies with regards for FM upgrades for existing stations.

In conclusion, KCNO, Inc. pleads the Commission Allot FM channel 267 C to Alturas, California for use by radio station KYAX (FM) from the petitioners proposed transmitter site on Manzanita Mountain and that the Commission, if approving this petition, will modify KYAX's current license consistent with the new channel and power level.

Prepared by:  
David Quinlan, consultant  
(916) 842-4635

The undersigned verifies that, to the best of his knowledge, the information contained in this rulemaking petition is correct, complete and is consistent with current commission rules and policies.

Respectfully submitted:

A handwritten signature in black ink, appearing to read "R. L. Hansen", written in a cursive style.

R L Hansen, President KCNO, Inc.  
P.O. Box 570  
Alturas, California 96101  
(916) 233-3570

EXHIBIT E-1  
FM SPACING REPORT AND STUDY  
BY DAVID QUINLAN  
ENGINEERING CONSULTANT

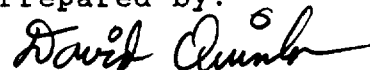
A study of the FCC data base supply by Dataworld, Inc. available September 9th, 1992 using the coordinates of KYAX's proposed transmitter site (41:16:53.5 N 120:48:02.1 W) shows that channel 267C is available to be allocated to Alturas.

The data base shows that no other licensed or proposed FM broadcast station will infringe in to the minimum distances required for this allotment request... However, the Altamont, Oregon allocation has been order to move to channel 249 from 267 effective September 8, 1992 as per FCC release #147 (see exhibit E-2). This channel change in Altamont, Oregon clears the allocation for use in Alturas.

A copy of this rulemaking petition has been served on the permit holder of the Altamont, Oregon allocation as per FCC rules, see exhibit E-3.

From the proposed transmitter site KYAX upgrade request complies with the spacing requirements as set in FCC rules 73.207.

Prepared by:



David Quinlan, Consultant  
P.O. Box 125  
Yreka, Ca 96097

EXHIBIT E-2  
COPY OF FCC REPORT AND ORDER  
TO MOVE THE  
ALTAMONT, OREGON ALLOCATION  
TO NEW CHANNEL

RECEIVED

SEP 28 1992

MAIL BRANCH

Before the  
Federal Communications Commission  
Washington, D.C. 20554

MM Docket No. 91-341

In re Matter of

Amendment of Section 73.202(b). RM-7836  
Table of Allotments. RM-7897  
FM Broadcast Stations.  
(Altamont and Bandon,  
Oregon, and Tulelake,  
California)<sup>1</sup>

REPORT AND ORDER  
(Proceeding Terminated)

Adopted: July 6, 1992;

Released: July 23, 1992

By the Chief, Allocations Branch:

1. At the request of Western States Broadcasting ("petitioner"), the Commission has before it the *Notice of Proposed Rule Making*, 6 FCC Rcd 6986 (1991), proposing the substitution of Channel 243C1 for Channel 267C at Altamont, Oregon, and the modification of Station KCHQ(FM)'s license to specify operation on the lower class channel. Comments were filed by the petitioner reiterating its intention to apply for Channel 243C1, if allotted to Altamont. Comments in opposition and a counterproposal were filed by Michael T. McKenna ("McKenna") seeking the allotment of Channel 243C2 to Tulelake, California, and Channel 243C3 to Bandon, Oregon.<sup>2</sup> Reply comments were filed by the petitioner.<sup>3</sup>

2. McKenna states that the allotments at Bandon and Tulelake will provide each community with its first local aural transmission service. He also states his intention to apply for both channels, if allotted. To resolve the conflict with the Altamont proposal, McKenna proposes that

Channel 284C1 be allotted to Altamont instead of the proposed Channel 243C1. Petitioner opposes the grant of McKenna's counterproposal. It states that Station KCHQ(FM), presently operating on Channel 267C, must be located over 20 kilometers east of Altamont to avoid a short-spacing to Station KCMX-FM, Channel 270C, Ashland, Oregon. However, because the terrain between the transmitter site and Altamont is hilly, the station is unable to provide its community of license with an adequate signal. Further, it states that it cannot find a suitable replacement site for use with its present allotment.<sup>4</sup> The allotment of Channel 284C1 would also require a transmitter site to the east of Altamont. If Channel 243C1 is allotted to Altamont, petitioner could locate its station's transmitter on Chase Mountain, to the west of Altamont, and provide improved service to Altamont.

3. We believe the public interest would be served by granting each of the petitions before us. Further, the proposals need not be comparatively considered since each of the proponents can be accommodated. A staff study has shown that Channel 249C1 can be allotted to Altamont in compliance with the Commission's minimum distance separation requirements at the transmitter site proposed by the petitioner, in lieu of Channel 243C1. Therefore, we believe that the public interest would be served by substituting Channel 249C1 for Channel 267C at Altamont, since it could enable Station KCHQ(FM) to improve service to the residents of Altamont by resolving its signal problems. The allotment of Channel 249C1 to Altamont also permits Channel 243C2 to be allotted to Tulelake and Channel 243C3 to Bandon as each community's first local aural transmission service. Finally, as proposed, we will modify petitioner's license for Station KCHQ(FM) to specify operation on Channel 249C1 in lieu of its present Channel 267C.

4. Channel 249C1 can be allotted to Altamont, Oregon, in compliance with the Commission's minimum distance separation requirements with a site restriction of 24.8 kilometers (15.5 miles) southwest to accommodate petitioner's desired transmitter site. Channel 243C3 can be allotted to Bandon, Oregon, with a site restriction of 12.1 kilometers (7.5 miles) south to avoid a short-spacing to Station KACW, Channel 297C1, North Bend, Oregon. Channel 243C2 can be allotted to Tulelake, California, without the imposition of a site restriction.<sup>5</sup>

<sup>1</sup> The communities of Bandon and Tulelake have been added to the caption.

<sup>2</sup> Public Notice of the filing of the counterproposal was given on February 4, 1992, Report No. 1874.

<sup>3</sup> After the record closed in this proceeding, McKenna filed an Expression of Continued Interest for Allocation reiterating his intention to apply for the requested channels at Bandon and Tulelake. The Commission's Rules do not provide for a response period beyond the comment and reply comment periods set forth in the *Notice of Proposed Rule Making* and the filing date set forth in the Public Notice announcing the filing of counterproposals. McKenna's pleading was filed after the last date for the filing of such responses. In addition, McKenna failed to serve a copy of its pleading on the petitioner, thus violating the Commission's *ex parte* provisions. See Section 1.1200 of the Commission's Rules. Therefore, McKenna's responsive pleading will not be considered.

<sup>4</sup> Petitioner also opposes the consideration of McKenna's counterproposal on procedural grounds. It argues that McKenna did

not comply with the Commission's service requirements in that the counterproposal was not mailed to him until January 18, 1992, while McKenna states that it was mailed on January 15, 1992. Section 1.47(a) of the Commission's Rules states, in pertinent part, that where a person is required to serve a document filed with the Commission, service shall be made by that person or by his representative, on or before the day on which the document is filed. McKenna's counterproposal was filed with the Commission on January 17, 1992, but it appears that it was not mailed to petitioner until the following day. However, since petitioner has responded to the counterproposal and both parties can be accommodated, we believe that the one day delay in mailing the counterproposal should not result in the severe action of dismissing the counterproposal. This action should not be construed as a relaxation of the Commission's Rules in this regard. We caution potential parties that the failure to comply with the Commission's procedural rules can result in the dismissal of the request.

<sup>5</sup> The coordinates for Channel 249C1 at Altamont are North

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED. That effective September 8, 1992, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Tulelake, California	243C2
Altamont, Oregon	249C1
Bandon, Oregon	243C3

6. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Western States Broadcasting for Station KCHQ(FM), Altamont, Oregon, IS MODIFIED to specify operation on Channel 249C1, in lieu of Channel 267C, subject to the following conditions:

(a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

7. The window period for filing applications for Channel 243C2 at Tulelake, California, and Channel 243C3 at Bandon, Oregon, will open on September 9, 1992, and close on October 9, 1992.

8. IT IS FURTHER ORDERED. That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

#### FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

Latitude 42-05-36 and West Longitude 121-59-35. The coordinates for Channel 243C3 at Bandon are 43-00-30; 124-25-30. The

coordinates for Channel 243C2 at Tulelake are 41-57-24; 121-28-30.

EXHIBIT E-3  
PROOF OF SERVICE TO THE  
ALTAMONT, OREGON PERMIT HOLDER

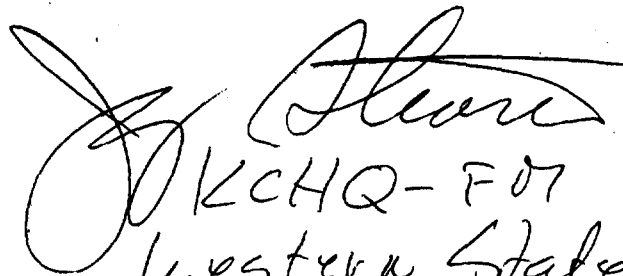
I served Jay Stevens, General Manager of Western States  
Broadcasting with a copy of this rulemaking petition on  
September 12, 1992 see the attached copy of the hand written  
receipt written and signed by Mr. Stevens.

A handwritten signature in black ink, appearing to read "David Quinlan", with a stylized flourish at the end.

David Quinlan, Technical Consultant  
KCNO, Inc.  
P.O. Box 125  
Yreka, CA 96097  
916-842-4635



Received 9/12/92 Copy of  
Rulemaking for KCHO, Inc. -

J. (Steve)  
KCHQ-FM

Western States Broadcasting, Inc